

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 623 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

R.U.SHAH, FOOD INSPECTOR

Versus

BERAMSHAH MINOCHEHR

Appearance:

NOTICE SERVED for Petitioner

MR RR MARSHALL for Respondent No. 1

MR MA PATEL, APP for Respondent No. 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/11/1999

ORAL JUDGEMENT

1. The complainant R.U. Shah serving in Surat Municipal Corporation filed complaint bearing PFA Case No. 38/1984 before the Ld. Judicial Magistrate First Class at Surat against the respondents, hereinafter referred to as 'the accused', for the offence punishable under sections 7 and 16 of the Prevention of Food

Adulteration Act, 1954 (for short 'PFA Act') on following brife facts :-

2. The complainant, as a Food Inspector was on his duty as such at 6.15 in the morning of 13/12/1983. When he reached at 10/824, Ambaji Road, Vadi Falia, Surat, at that time the accused no. 2 was proceeding on his bicycle with two cans of milk of the quantity of 25 litres each for its sale to Choryasi Taluka Milk Sale Cooperative Dairy (Choryasi Milk Dairy). He was stopped by the complainant for the purpose of taking sample. He accordingly purchased milk from each of the two cans and collected the same in plastic jugs duly made clean under Code No. D 303 and 304. He then made three parts of the milk so collected from each of the jugs and accordingly made three samples in three glass bottles each after adding 19 drops of formalin in each of the bottles. After following necessary procedure of applying seal and making Panchnama in that respect he sent one bottle from each of the samples (D 303 and 304) to the Public Analyst at Surat and remaining two sealed bottles from each of the samples with necessary slips were sent to the Local health Authority, Surat. He paid the price of the sample milk as particularised in the complaint. The Public Analyst, Surat, after analysing and examining the milk found that in sample milk bearing D 303 fat was less to the extent of 8.33%, whereas in sample milk D 304 fat was less to the extent of 8.33%. The complainant therefore, sought sanction from the Local Health Authority which was received. The complainant, therefore, filed the complaint on 16/4/1984. Bailable warrant was issued returnable on 27/4/1984. The warrants were sent once again as they remained unserved and ultimately accused persons appeared on 24/5/1984. After recording the evidence and examining the accused the Ld. Magistrate rendered impugned judgment and order of acquittal dated 30/11/1987, firstly on the ground that provision of rule 18 of Prevention of Food Adulteration Rules was not complied with and secondly on the ground that there was delay in filing the complaint in the background of the fact that instrument of measure (Mapiyu) was called for from Choryasi Dairy although two instruments of measures were available with the complainant himself.

3. Being aggrieved with and dissatisfied by the aforesaid judgment and order of the acquittal the complainant moved Misc. Criminal Application No. 424 of 1988 and upon leave having been granted in that proceeding, the appeal came to be admitted which appeal has now been placed for final hearing before this Court.

4. I have heard the Ld. A.P.P. appearing for the State and Ld. advocate appearing for the accused. Notice was issued to the complainant for appearing before this Court in view of the fact that the Ld. Advocate Mr. R.V. Deshmukh is appointed as an Education Tribunal. No one has appeared for the complainant, who happens to be the appellant in this appeal, for arguing the matter. However, I have considered the grounds of his appeal for the purpose of disposing of this appeal on merits.

5. In his appeal the complainant has contended that there was no breach of rule 18 committed by the complainant, as copy of memorandum and specimen seal were sent to the Public Analyst separately as required by rule 18 of the PFA Rules and that he had requisitioned a measure (Punjar) from Choryasi Dairy since he had smaller measures with the aid of which he could not stirr or shake milk properly before taking samples.

6. I have heard Mr. M.A. Patel, Ld. A.P.P. for the State and Mr. R.R. Marshal, L.A. for the accused persons. I have also gone through the memo of appeal. Some efforts were made on behalf of the accused to submit that there was no compliance of rule 18 of the PFA Rules and the Ld. Magistrate rightly acquitted the accused persons on that basis. Rule 18 as it stood at the relevant point of time would indicate that a copy of the memorandum of a specimen impression of the seal used to seal the packet should be sent to the Public Analyst separately by Registered post or deliver to him or to any person authorised by him. On verification of the relevant documents exhs. 17 and 18 it clearly appeared that the complainant had sent copy of the memorandum accompanied with the seal as required by the aforesaid rule and was received by the Public Analyst separately. Exh. 17 would indicate sending of the samples and exh. 18 would indicate sending of the copy of memorandum coupled with specimen impression of the seal. The reports of the Public Analyst appearing at exhs. 19 and 20 also say that the specimen impression of the seal which was compared was sent separately by the Food Inspector. In that view of the matter, the finding of the Ld. Magistrate on that count clearly appears to be contrary to record and deserves to be assailed.

7. Mr. Marshal then read evidence of the complainant. He pointed out following salient features of the evidence for submitting that in fact the accused persons stood prejudiced on account of filing of the complaint more than 4 months after the date on which the incident occurred. He firstly submitted that the

complainant had requisitioned required instrument of measure from Choryasi Dairy where milk was to be supplied. In the second place he submitted that the complainant admitted that he had purchased preservative (formalin) from the market, instead of having the same taken from the Local Authority on whose behalf he was acting. Besides, no bill/bills came to be produced for supporting his say about purchase of preservative from the market. Mr. Marshal drew my attention to the fact that there was no material to show that the expiry date of the preservative so purchased did not pass away and that it was used before its expiry date. He then pointed out that the copy of the report of Public Analyst was sent to the accused persons respectively on 17/4/1984. He pointed out from exh. 25, the evidence of the complainant that the accused no. 2 received the necessary intimation coupled with copy of the report of the Public Analyst in the month of May 1984. He, therefore, submitted that the right of the accused persons u/S. 13(2) of the PFA Act stood adversely affected on account of such delay. He finally submitted that all the aforesaid circumstances would assume importance bearing in mind the fact that there was negligible shortage of fat in the sample milk in question. As per the required standard fat ought to have been 6%; whereas in the samples it was noticed at 5.5%. In the background of the aforesaid circumstances, submitted Mr. Marshal, the finding of the Ld. Magistrate on facts upon appreciation of evidence should not be disturbed. Mr. M.A. Patel, Ld. A.P.P. for the State did not counter the factual aspect so indicated on behalf of the accused. This is the appeal of 1988 and bearing in mind all the aforesaid circumstances, this is a case where the present appeal is not required to be entertained on facts.

In the result, this appeal is dismissed.

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PVR.